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Supreme Court, U.S.
FILED
JUN 28 1991
OFFICE OF THE CLERK

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No. 90-1846

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

GEORGE F. DENTON, et al.,

Petitioners,

v.

MIKE HERNANDEZ,

Respondent,

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

(9)

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Mike Hernandez, respondent in the above-captioned proceeding, by and through counsel appointed for him by the United States Court of Appeals for the Ninth Circuit, does herewith submit his brief in opposition to the petition of George F. Denton, et al., for certiorari to said United States Court of Appeals.

OPINIONS BELOW

The original opinion of Ninth Circuit in Hernandez v. Denton ("Hernandez I") appears at 861 F.2d 1421 (9th Cir. 1988). On a previous petition for certiorari (No. 88-2034), this Court vacated the Ninth Circuit's decision and remanded this case to that Court for further consideration in light of Neitzke v. Williams, 490 U.S. 319 (1989). Denton v. Hernandez, __ U.S. __, 110 S.Ct. 37, 107 L.Ed.2d 7 (1989).

The initial opinion of the Ninth Circuit after remand from this Court, Hernandez v. Denton, appears at 919 F.2d 573 (9th Cir. 1990). No party petitioned for rehearing, but a Judge of that Court, sua sponte, requested that the Court consider the case en banc. Ultimately, that Court decided not to review the matter en banc, but the panel slightly modified its initial opinion on remand. A copy of the order declining en banc review and modifying the opinion is appended to petitioners' certiorari petition herein as Attachment 1, and the modified opinion, Hernandez v. Denton ("Hernandez II"), appears at 929 F.2d 1374 (9th Cir. 1991).

JURISDICTION

This Court has jurisdiction over the certiorari petition filed herein, pursuant to 28 U.S.C. §1254(1).

STATUTE INVOLVED

28 U.S.C. §1915(d): "The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." (Emphasis added.)

QUESTION PRESENTED

Petitioners have stated the question presented, as follows:

> "Whether a Federal District Court may dismiss a complaint pursuant to 28 U.S. Code section 1915(d) if it finds the complaint wholly fanciful despite the fact that reliance was not made on judicially noticeable facts, i.e. facts of which [sic] are generally known or ascertainable by reference to a readily available, accurate source."

Respondent believes that a more accurate statement of the issue involved in this case, and the question to be presented, is as follows:

> "What standards should be followed by a United States District Court in determining whether the factual allegations in a complaint filed in forma pauperis pursuant to 28 U.S.C. §1915(a) are "frivolous" within the meaning of 28 U.S.C. §1915(d), and at what point in the proceeding should those standards be applied."

STATEMENT OF THE CASE

Prior to 1986 respondent Mike Hernandez, a state prisoner, had filed five civil rights complaints against various officials and employees of the California Department of Corrections, pursuant to 42 U.S.C. §1983. On numerous occasions the United States District Court for the Eastern District of California had granted Hernandez leave to proceed in forma pauperis, under 28 U.S.C. §1915(a), but had pronounced itself unable to "determine from the present record whether or not plaintiff's claim is frivolous" within the meaning of 28 U.S.C. §1915(d). The District Court had ordered Hernandez to engage in document discovery, pursuant to the Federal Rules of Civil Procedure, to obtain certain requested information.

On April 17, 1986, however, while various discovery motions by Hernandez were pending[1], the United States Magistrate filed findings and recommendations that the cases be dismissed pursuant to 28 U.S.C. §1915(d). On May 5, 1986, the

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[1] Hernandez had sought various documents from his prison medical file, in an effort to obtain evidence which would have tended to support his factual allegations concerning the assaults which are the subject of this proceeding. In light of the dismissal of his actions at the district court level, those discovery motions were never ruled upon.

District Court adopted the Magistrate's recommendation and entered judgments of dismissal as to each of the cases. Hernandez filed notices of appeal as to three of the five cases; in each of those three cases, Hernandez had filed with the Court affidavits from other prisoners which tended, at least in part, to support his factual allegations.

The complaints contained allegations that Hernandez, during night hours while he was asleep, had been drugged and rendered comatose by prison guards, and had then been assaulted and raped in his cell, either by those guards or by other guards or inmates allowed into his cell by those guards. Because of his comatose state, Hernandez did not claim to be able, personally, to identify any of his assailants, although affidavits from other prisoners did assert their abilities to identify some of the persons who had entered his cell. The complaints alleged that Hernandez had sought medical attention for his injuries, and administrative relief prohibiting the commission of further similar assaults, without success. Collectively, the complaints alleged that such events had occurred on 28 occasions over a period of more than two years.

The Magistrate's recommendation for dismissal, which the District Court adopted, was based upon the following rationale contained in the recommendation:

> "The court has concluded that the present five actions lack arguable substance in law or fact and should therefore be dismissed. Although each complaint, taken separately, is not necessarily frivolous, a different picture emerges from a reading of all five complaints together. Plaintiff alleges that both guards and inmates, at different institutions, subjected him to sexual assaults. Despite the fact that different defendants are allegedly responsible for each assault, the purported modus operandi is identical in every case. Moreover, the attacks occurred only sporadically throughout a three year period. The facts thus appear to be 'wholly fanciful' and justify this court's dismissal of the actions as frivolous."

The Ninth Circuit Court of Appeals reversed the dismissals, and remanded the cases to the District Court. Hernandez I, supra, 861 F.2d 1421 (9th Cir. 1988). Three separate opinions were authored by the panel. The lead opinion affirmed the dismissals on certain claims which are not the subject of the present certiorari petition[2], but reversed the dismissals on the subject claims, because those dismissals had been "based upon credibility determinations impermissible under section 1915(d)." Hernandez I, supra, 861 F.2d at 1427. The holding of the lead opinion was to the effect that "[o]nly if the facts alleged are impossible in light of any judicially noticeable fact may the district court find a complaint 'wholly fanciful' and hence without arguable substance in law or fact." Id. at 1426.

The California Attorney General, representing the defendant prison officials and employees, filed a petition for certiorari. Subsequent to Hernandez I, this Court rendered its decision in Neitzke v. Williams, 490 U.S. 319 (1989). Accordingly, this Court granted certiorari, vacated the Ninth Circuit's disposition, and remanded the matter for further consideration in light of Neitzke.

On remand, each of the members of the Ninth Circuit's panel concluded that this Court's decision in Neitzke supported, or at least did not cause a change in, his or her previously-expressed views, and that Court reaffirmed its previous disposition of Hernandez I. Hernandez v. Denton, supra, 919 F.2d 573 (9th Cir. 1990). The lead opinion concluded that

> "Under Neitzke, we do not believe that a claim can qualify as patently 'delusional' or 'hallucinatory' unless it rests upon facts which the court knows could not have occurred." Hernandez v. Denton, supra, 919 F.2d at 575, modified on denial of rehearing en banc in Hernandez II, supra, 929 F.2d at 1376.

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2 The Court of Appeals affirmed the dismissal of Hernandez' claims under the Eighth Amendment, involving allegations of (a) deprivation of a blanket for an unspecified period of time, (b) deprivation of shoes for a month, and (c) physical and verbal abuse by prison officials.

A lengthy dissenting opinion in Hernandez I, commencing at page 1427 of 861 F.2d, had set forth the view that Hernandez' various complaints represented nothing more than "the hallucinations of a troubled man"[3] (861 F.2d at 1440), and that no amendment could cure that problem. On remand, the dissenting judge reaffirmed that view, and opined that his position "has been endorsed sub silentio by the [Supreme] court in its remand to us." Hernandez v. Denton, supra, 919 F.2d at 576, modified on denial of rehearing en banc in Hernandez II, supra, 929 F.2d at 1377.

After the Ninth Circuit as a whole rejected a sua sponte suggestion of one of its members for an en banc rehearing, the panel further modified its decision by striking its prior specific direction that Hernandez be permitted to amend his claims "to provide more specific factual recitations of the time and place of each of the rapes and conduct on the part of prison officials which violated constitutional standards." The California Attorney General, on behalf of the defendant prison officials and employees, has again sought certiorari.

ARGUMENT - CERTIORARI SHOULD NOT BE GRANTED

I. The Effect of this Court's decision in Neitzke v. Williams, 490 U.S. 319 (1989).

In Neitzke v. Williams, 490 U.S. 319 (1989), this Court held that the fact that a pro se complaint fails to state a claim sufficient to withstand a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP") does not automatically render that complaint subject to dismissal, as frivolous, under 28 U.S.C. §1915(d).

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[3] Although the dissent makes several references to Hernandez' place of incarceration as the Atascadero State Hospital, in fact Hernandez is presently incarcerated at Folsom State Prison, and has been for several years.

The instant case represents the next step of the Neitzke analysis. Neitzke establishes the proposition that Rule 12(b)(6) and Section 1915(d) "were devised to serve distinctive goals", and that while the two standards have considerable overlap, they are not identical. Neitzke also establishes that Section 1915(d) accords to district judges "the unusual power to pierce the veil of the complainant's factual allegations and dismiss those claims whose factual contentions are clearly baseless." The Court has even articulated that authority to dismiss complaints under Section 1915(d) would extend, by way of example, to "claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar."

The question now presented is how, or on the basis of what standards, a district judge is to conclude that a particular factual claim is "clearly baseless," either because it is "fantastic or delusional" or otherwise.[4] That question has been at the heart of Hernandez' appeal, and a majority of the Court of Appeals panel has concluded that "lack of credibility" and "unlikelihood" are insufficient to qualify within the "clearly baseless" standard. The lead opinion in Hernandez I (pre-Nietzke) answered the standards question, correctly in Hernandez' view, by concluding that a district court must be able to take judicial notice of facts rendering the allegations of the complaint untrue, before that court can dismiss a complaint as factually frivolous under 28 U.S.C. §1915(d). 861 F.2d at 1426. On remand, however, the lead opinion retreated somewhat from that conclusion, by stating that judicial notice pursuant to Rule 201(b), Federal Rules of Evidence, is merely "one useful standard" in making the frivolousness determination.[5] 919 F.2d at 575, modified on denial of rehearing en banc in Hernandez II, supra, 929 F.2d at 1376.

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[4] The present certiorari petition does not appear to raise issues pertaining to the legal sufficiency of Hernandez' claims, as opposed to the question of whether they are factually "baseless."

[5] Petitioners' argument that the Ninth Circuit has limited Section 1915(d) dismissals to situations involving judicially noticeable facts which contradict the complainant's

II. The Meaning of the Term "Frivolous" Under §1915(d).

It is hardly disputable that Hernandez' factual allegations, if true, would be sufficient to state a claim for relief, against somebody. One basis for a Section 1915(d) dismissal is the inability of a claimant to present facts which, if true, would be legally sufficient to justify relief. That is not the issue here. The issue here is whether, and if so how, a district court can determine that a claimant's factual allegations are so "fanciful" as to be frivolous to a degree justifying a Section 1915(d) dismissal.[6]

Petitioners would have this Court believe that the Ninth Circuit has "distorted" this Court's decision in Neitzke, has "evaded" uniform and simple rules of construction applicable to §1915(d), has been guilty of "hyperbole" in discussing the subject of credibility, and has virtually precluded district courts from exercising discretion in dealing with in forma pauperis litigants who meet the poverty qualification. None of this is true!

allegations is thus incorrect. Although that position might have been accurate if this Court were reviewing Hernandez I, the action of the Ninth Circuit panel, on remand, has broadened the permitted area of inquiry. For example, Section 1915(d) dismissals might well be appropriate where the prisoner's complaint facially demonstrates the existence of affirmative defenses rendering relief on it impossible, e.g. absolute immunity, res judicata, collateral estoppel, or the statute of limitations. Other matters that a district court might consider, in exercising its discretion, include whether the defendant is judgment-proof, whether identical claims have been litigated unsuccessfully by others, and whether alternative remedies exist for the facts pleaded.

[6] Petitioners spend significant effort in pointing to evidence tending to establish that Hernandez has mental problems, presumably in an attempt to equate an alleged delusionary status with delusionary allegations. As pointed out in Battle v. Central State Hospital, 898 F.2d 126, 130 (11th Cir. 1990), however, mental illness is not necessarily inconsistent with the ability to present a properly stated claim. Although a specific prisoner may be in need of medical or psychiatric treatment, his constitutional claims are nevertheless entitled to consideration on the same basis as similar claims by others.

In particular, petitioners seem to argue that Hernandez has admitted his own incompetency, by his assertion in Hernandez v. Ylst, 930 F.2d 714 (9th Cir. 1991), that his description of similar rapes in the San Luis Obispo County Jail, prior to his homicide trial, demonstrated his incompetency. To the contrary, however, the Ninth Circuit expressly found that Hernandez' relating of those events to his trial judge did not form a sufficient basis to require a competency hearing, much less a finding of incompetency.

The Sixth Circuit, in a case not involving significant analytical differences from Hernandez', has drawn an objective line which Hernandez believes to be appropriate, and which the Ninth Circuit has followed, albeit in different language. In Lawler v. Marshall, 898 F.2d 1196, 1199 (6th Cir. 1990), the Sixth Circuit opined that

> "The standard is not whether or not the district court believes the prisoner -- rather, it is whether the facts are rational. The defendants argue that because Lawler claims he saw the guards laughing in the reflection off his nail clipper, the claim is not rational. While Lawler's assertion strains credulity, it is not based on a delusional assertion of facts."

The Sixth Circuit referred, as examples of what it meant by delusional facts, to "prisoner petitions asserting that Robin Hood and his Merry Men deprived prisoners of their access to mail or that a genie granted a warden's wish to deny prisoners any access to legal texts." Ibid. But see White v. White, 886 F.2d 721, 721 (4th Cir. 1989) [a frivolousness finding need not require the court be faced with prisoner allegations that he is "appealing a criminal conviction returned on the planet Saturn"]. The Sixth Circuit's example is not materially different from that argued by Hernandez' counsel to the Ninth Circuit, and to this Court on petitioners' prior certiorari petition:

> "This is not a case where a prisoner is alleging that 'little green men from Mars' have taken over his mind by radio waves, and that prison authorities are responsible therefor! Allegations of that type would no doubt qualify for inclusion under the 'fantastic or delusional scenarios' language of Neitzke."

There is nothing "wholly fanciful," or "fantastic or delusional," however, about the propositions that drugs exist, or that homosexual activity occurs, or that inmate-guard relationships are less than amicable, in prison settings. Although the repetitive number of alleged rapes, Hernandez' claim that he was unaware of them

at the time they were occurring, and his claim that prison guards may have committed them and at least knowingly assisted them, are unusual, there is nothing in the inherent nature of those allegations that is inconsistent with judicially noticeable facts about the seamier side of prison life. Hernandez' allegations might (or might not) be uncredible; they are not, however, irrational.

Also contrary to petitioners' assertions, the above-referenced distinction between "rationality" and "credibility," expressly drawn by the Sixth Circuit and impliedly by the Ninth Circuit in the instant case, is a common and typical response of Courts of Appeals to this Court's decision in Nietzke. Although other circuits have not necessarily articulated the distinction with the clarity of the Sixth Circuit, the following post-Nietzke decisions demonstrate that the distinction has been generally recognized and accepted:

Fifth Circuit: Wesson v. Oglesby, 910 F.2d 278, 282 (5th Cir. 1990) ["inherently plausible and internally consistent"];[7]

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[7] Hernandez notes that the Fifth Circuit has adopted a procedure called a "Spears hearing," [Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985)], in the nature of an evidentiary proceeding analogous to a motion for more definite statement under Rule 12(e), FRCP. The purpose of the hearing is (a) to assure that indigents have meaningful access to the federal courts, while at the same time (b) "winnow[ing] out the wheat from the unusual amount of chaff" involved in pro se litigation. Wilson v. Barrientos, 926 F.2d 480, 482 (5th Cir. 1991). Similarly, the Tenth Circuit employs a so-called "Martinez report" procedure [Martinez v. Aaron, 570 F.2d 317 (10th Cir. 1978)], which permits district courts to require the submission of administrative reports, and to use those reports in Section 1915(d) evaluations, "as a means of determining jurisdiction, sorting and clarifying issues and otherwise elucidating the often obscure complaints filed by pro se plaintiffs." El'Amin v. Pearce, 750 F.2d 829, 832 (10th Cir. 1984). No similar procedure exists in the Ninth Circuit.

In the instant case, we may not even have reached the point at which a Spears hearing would be appropriate, because the desirability of Hernandez filing an amended complaint or complaints, to clarify his position, has been alluded to by the concurring panel judge. The Fifth Circuit does permit district judges to make "limited credibility determinations" for Section 1915(d) dismissals (Wilson v. Barrientos, supra, 926 F.2d at 483), but only on the basis of "evidence . . . meet[ing] adequate indicia of reliability." Ibid. None of these procedural safeguards have been afforded to Hernandez.

Tenth Circuit: Williams v. Meese, 926 F.2d 994, 997 (10th Cir. 1991) ["plaintiff can prove no set of facts in support of his claim"] and

Eleventh Circuit: Battle v. Central State Hospital, 898 F.2d 126, 130 (11th Cir., 1990) ["some rational basis in fact"].[8]

III. The Procedural Posture of Hernandez' Actions at the Time of Dismissal.

The concurring judge of the Court of Appeals panel characterized Hernandez' allegations as "unlikely." A number of factors, however, exist in the record to support at least the possibility of another conclusion, including the following:

1. Hernandez had moved for document discovery of various of his prison medical records, supposedly in aid of being able to support his credibility by showing that he had in fact sought the medical attention which he alleged;[9]

2. Hernandez had filed affidavits from three other prisoners which purported to support his contentions that guards and other inmates had entered his cell at night; and

3. The Magistrate had opined that Hernandez' allegations, taken separately, were not frivolous, and that it was only their identical nature in multiple instances that rendered them frivolous.

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[8] Candor requires the observation, however, that the Fifth and Eleventh Circuits have also articulated a standard which would appear to permit Section 1915(d) dismissals where a trial court finds, with regard to specified factual allegations, that the plaintiff's "realistic chances of ultimate success are slight." Wesson v. Oglesby, supra at 281; Clark v. State of Georgia Pardons and Paroles Board, 915 F.2d 636, 639 (11th Cir. 1990). Hernandez contends (a) that this standard appears to be internally inconsistent with the "rational/credible" distinction also observed by those courts, and (b) that at least in the Fifth Circuit a "Spears hearing" can adduce specific grounds for determining a lack of "realistic chances of success" which are not properly determinable from the face of the prisoner pleadings themselves.

[9] If Hernandez' claims can properly be dismissed as "fanciful," such a result will occur (a) in the face of the District Court's inability to make such a determination on the basis of the face of his individual pleadings alone, but (b) also in the face of the District Court's failure to allow him to attempt to secure objective evidence which might tend to support those claims.

These facts, and the posture of Hernandez' actions at the time of the Magistrate's dismissal recommendations[10], give rise to another question of significance in the interpretation of Section 1915(d): Is it appropriate for a district judge to dismiss an action under the authority of Section 1915(d) after the complaint has been served and the defendants have answered? The rule of the Third Circuit is "No." See Roman v. Ieffes, 904 F.2d 192 (3d Cir. 1990). Although this was not in issue before the Ninth Circuit, that is what happened here. If it is the purpose of Section 1915(d) to discourage the wasteful use of judicial resources, that concept would seem to mandate that Section 1915(d) dismissals occur prior to service of process. If a complaint is sufficiently colorable to survive an initial screening review upon filing, as was clearly the case here, it should be left to the parties to inform the Court as to the existence or non-existence of facts and/or legal theories justifying either a continuation or a dismissal of the action.

CONCLUSION

The Ninth Circuit Court of Appeals, consistent with a majority of the other circuits, has held that determinations of credibility are impermissible, at least without the taking of evidence, in making a decision as to whether an in forma pauperis complaint should be dismissed as frivolous, pursuant to 28 U.S.C. §1915(d). A distinction exists between determinations of rationality and determinations of credibility. The Ninth Circuit observed that contextual distinction, and found Hernandez' allegations not to be irrational. In doing so, the Ninth Circuit has acted

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10 Petitioners have alluded to a number of facts, e.g. denial of his habeas petition and dismissal of another Section 1983 complaint alleging that he was forced to eat food laced with heroin, which have arisen subsequent to the District Court's dismissal of the cases involved in the instant proceeding. Whatever consideration might appropriately be given to those facts by the District Court in the future, those facts were not before the District Court at the time it dismissed Hernandez' instant actions, and therefore are not properly a part of the record on the basis of which this Court should render its decision.

consistently with, and not at odds with, the majority of the courts which have interpreted Neitzke.

Moreover, the policy aim at which Section 1915(d) is directed, the avoidance of wasteful and unnecessary expenditure of judicial resources, is best served at the very inception of pro se litigation, before process has been served and the defendants have been compelled to answer.[11] Once the parties have come to issue, it is unseemly for the Court to interject itself, sua sponte, onto one side at the expense of the other. But that would be the effect of permitting Section 1915(d) dismissals after the filing of responsive pleadings.

Here, petitioners appear to be seeking a rule permitting the discretionary making of credibility determinations, without the protections of any evidentiary hearing, without the opportunity to amend to meet procedural pleading deficiencies, and long after the defendants have been served and some of them have filed responsive pleadings, in a context where the prisoner's allegations, while perhaps unlikely, are not inherently irrational. If it is still the law that prisoners in their pro se petitions are to be held "to less stringent standards than formal pleadings drafted by lawyers," (Haines v. Kerner, 404 U.S. 519, 520 [1972]), and that prisoners are entitled to "those rights not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration," (Hudson v. Palmer, 468 U.S. 517, 523 [1984]), then petitioners' posture here would drastically impact those rules of law. There is no justification therefor. Petitioners' petition for

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11 Compare this Court's recent amendment to its Rule 39, by adding Rule 39.8 which provides for denial of in forma pauperis status if the Court is "satisfied" that a certiorari or other petition is "frivolous or malicious."

certiorari to the United States Court of Appeals for the Ninth Circuit should be denied.

DATED: June 27, 1991

Respectfully submitted,

Richard W. Nichols

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(1915 - 1987)

June 28, 1991

Clerk of the Court
United States Supreme Court
Washington, D.C. 20543

Re: Denton, et al. v. Hernandez, No. 90-1846

Dear Mr. Clerk:

Enclosed are the original and fifteen copies of Brief of Respondent in Opposition to Petition for Certiorari, pursuant to Supreme Court Rule 39.5. Also enclosed are the original and fifteen copies of the following documents, submitted pursuant to Supreme Court Rule 39.1:

1. Motion by Respondent Mike Hernandez for Leave to Proceed in Forma Pauperis;

2. Motion for Appointment of Counsel for Indigent Party; and

3. Consent of Attorney to Appointment as Counsel for Respondent.

Please return three endorsed copies of these documents to the undersigned.

No affidavit or declaration is submitted with these documents, because the undersigned was appointed as counsel for respondent by the United States Court of Appeals for the Ninth Circuit. That appointment, however, was a pro bono appointment and not under the Criminal Justice Act. Additionally, respondent was permitted to proceed in forma pauperis in that Court.

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ROSEVILLE, CALIFORNIA 95661
(916) 773-2711
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Because of the language of Supreme Court Rule 39.1, it is unclear to counsel whether an affidavit or declaration is required.

Very truly yours,

Richard W. Nichols

Richard W. Nichols

RWN/p
Encls.

cc: James Ching, Supervising Deputy Attorney General
State of California

Supreme Court of the United States

No. 90-1846

George F. Denton, Director of Corrections of California, et al.,

Petitioners

v.

Mike Hernandez

ON CONSIDERATION of the motion of respondent for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion, be, and the same is hereby, granted.

October 7, 1991

CASE TITLE: GEORGE F. DENTON, et al. v. MIKE HERNANDEZ

COURT/CASE NO: SUPREME COURT NO. 90-1846

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 555 Capitol Mall, Suite 950, Sacramento, California. I am over the age of eighteen years and not a party to the foregoing action.

On July 2, 1991 , I served the within

AFFIDAVIT OF MIKE HERNANDEZ IN SUPPORT OF MOTONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND FOR APPOINTMENT OF COUNSEL

on all parties in said action by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States post office mailbox at Sacramento, California, addressed as set forth below:

JAMES CHING, Supervising Deputy Attorney General
State of California
1515 K Street, Suite 511
Sacramento, California 95814

Mike Hernandez
C-49192, #3-A4-26
Folsom State Prison, P.O. Box "W"
Represa, California 95671

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 1991 , at Sacramento, California.

P. A. Le Doux